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THE ROLE OF YOUTH IN THE PROMOTION AND PROTECTION OF HUMAN RIGHTS, INCLUDING THE QUESTION OF CONCIENTIOUS OBJECTION TO MILITARY SERVICE

Report of the Secretary-General prepared pursuant to Commission resolution 1989/59

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Introduction

1. In its resolution 1989/59, adopted at its forty-fifth session on 8 March 1989, the Commission requested the Secretary-General to transmit this resolution to all States Members of the United Nations and report to the Commission at its forty-seventh session on the question of conscientious objection to military service, taking into account the comments provided by Governments and further information received by him.

2. According to this request, the Secretary-General invited States Members of the United Nations, by a note verbale of 7 July 1989, to forward to him any comments or information on the above-mentioned question. In reply to his request, the Secretary-General received information from the Governments of Argentina, Bahamas, Belgium, Brunei Darussalam, Burundi, Canada, Chad, Dominican Republic, Finland, Madagascar, Panama, Philippines, Portugal, Saudi Arabia, Spain, Sweden, United States of America, Venezuela and Yugoslavia. These replies are contained in Chapter I of the present report.

3. On the same date, the Secretary-General drew the attention of United Nations bodies, specialized agencies, intergovernmental and non-governmental organizations having an interest in the subject matter to Commission resolution 1989/59 and invited them to submit any information on the issue which might be at their disposal.

4. The following United Nations organs submitted relevant substantive information: United Nations Centre against Apartheid, United Nations Office of the Disaster Relief Co-ordinator and the United Nations High Commissioner for Refugees. The International Labour Office also submitted information. Comments were received from the Commission of the European Communities and from the following non-governmental organizations: Council of European National Youth Committees, European Bureau for Conscientious Objection, Fédération Internationale - Terre des Hommes, Friends World Committee for Consultations, International Association of Democratic Lawyers, Regional Council on Human Rights in Asia, Servicio Paz y Justicia. The information received is contained in Chapter II of this report.

5. Any further information or comments will be submitted in addenda to the present report.

I. COMMENTS PROVIDED BY GOVERNMENTS

ARGENTINA

[October 1989]
[Original: Spanish]

6. The current situation of conscientious objection in Argentina covers a very broad variety of circumstances, ranging from imprisonment in military units to straightforward exemption on account of "physical unfitness", and includes various intermediate circumstances such as facing trial, performing unarmed military service, etc.

7. This variety of circumstances would seem to be accounted for by the variety of attitudes conscientious objectors may adopt towards conscription. Thus, those who are most reluctant to perform their military service and most strongly opposed to it are ultimately convicted, either by the civil courts after a trial, or by the military courts simply by virtue of their infringement of article 44 of the Military Service Act (No. 17,531). This group includes the Jehovah's Witnesses, a number of whom have already been imprisoned for three to four years in the Campo de Mayo on account of their initial refusal to perform military service; their sentences are continually extended because of their repeated refusals to obey military orders. Information provided by this religious group indicates that approximately 10 persons are being held in the Campo de Mayo.

8. As is well known, in many other cases conscientious objectors have gone to court in order to obtain exemption from conscription, and some cases have recently attracted considerable attention. In the Portillo case, the Supreme Court issued a ruling on 18 April 1989, in which it recognized conscientious objection by persons who provide reliable and convincing justification for their refusal, on grounds of conscience or religion, to take up arms. It held that conscientious objectors must perform compulsory service without bearing arms, in other words, by performing alternative duties within the armed forces. As a result, Mr. Portillo was sentenced to perform one year's non-combatant service in the armed forces, in addition to the period stipulated for infringement of Act No. 17,531, article 44. The other case that recently received publicity in Argentina was that of a young man, Pablo Luna, who was compulsorily placed under military jurisdiction by the Federal Judge in Mercedes, Miguel Zito Soria, on 16 May 1989. However, the San Martin Federal Court suspended his compulsory conscription until such time as the Supreme Court rules on his application for conscientious objector status.

9. A number of religious groups, such as the Mennonites, who object both to bearing arms and to receiving military instruction, are in an intermediate situation between imprisonment and exemption. The vast majority of conscientious objectors in this situation have performed military service without bearing arms.

10. The other end of the spectrum is occupied by conscientious objectors who seek exemption, availing themselves of loopholes in the existing legislation. In the chapter on exceptions and exemptions, the Military Service Act (No. 17,531) makes provision for a large number of possible grounds for exemption, which, to judge by the numerous bills submitted, is

constantly growing. This group includes persons who apply to be declared unfit on health grounds (art. 32, para. 10), and those who belong to recognized religious sects or groups and who claim to be seminarists or ministers of their religion (art. 32, para. 30).

BAHAMAS

[16 November 1989]
[Original: English]

11. There is no provision in the Constitution of the Commonwealth of the Bahamas which is specific to conscientious objection to military service. This issue falls under the rubric of article 18 of the Constitution, which prohibits forced labour.

12. Article 18 (2)(b) of the Constitution provides that, for the purposes of article 18, the term "forced labour" does not include, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour which that person is required by law to perform in place of such service.

13. Article 18 of the Constitution states:

"18. (2) No person shall be required to perform forced labour.

(3) For the purposes of this Article, "forced labour" does not include:

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service in a naval, military or air force, any labour which that person is required by law to perform in place of such service;

(c) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place in which he is detained; or

(d) any labour required during a period of public emergency (that is to say, a period to which Article 29 of this Constitution applies) or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation."

BELGIUM

[28 December 1989]
[Original: French]

Acts relating to the status of conscientious objectors, as co-ordinated on 20 February 1980 - Amendments thereto */

Act of 20 April 1989

Procedure for the granting of conscientious objector status

14. The new procedure is designed to speed up consideration of applications: henceforth applicants submit their application for conscientious objector status to their local authority, which acknowledges receipt of the application and ensures that it is admissible. Within one month of the date of receipt, the local authority prepares a file, which it transmits to the Minister of the Interior. The latter takes a decision within one month: he either grants the applicant conscientious objector status or, if he considers that he is unable to take favourable action on the application, transmits it to the Council on Conscientious Objection, which takes a decision on the merits of the objection within two months, "on the basis of the conformity and compatibility of the substance of the application with the provisions of article 1".

15. If the application is rejected, it is still possible to appeal against the decision of the Council on Conscientious Objection to the Appeals Council on Conscientious Objection, while the latter's decision is open to appeal for judicial review.

Length of service

16. The length of the service performed by conscientious objectors is determined by the length of service required of conscripts in Belgium. However, rather than being calculated by a multiplier, the length of service is extended by a set period: an additional four months in the case of conscientious objectors assigned to civil defence or to public-health organizations or organizations providing personal assistance, and an additional eight months for those assigned to organizations performing socio-cultural activities (i.e. currently 16 or 20 months' service respectively).

Discipline

17. Two new principles, based on the Military Penal Code, have been introduced into legislation:

(a) The principle of desertion, in order to determine beyond what point absence without leave is liable to penal sanction;

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*/ The texts of the Acts of 20 April 1989 and of 29 June 1989 are available for consultation in the languages of submission (French and Flemish) in the Secretariat's files.

(b) The principle of discharge from service, when the behaviour of a conscientious objector is such as to be prejudicial to other serving conscientious objectors, or to the organization to which he has been assigned.

Conditions determining assignment

18. The new provisions of the law recapitulate and spell out in greater detail principles already implemented pursuant to a royal decree, a ministerial decree or simply administrative practice:

(a) The quota principle, which concerns both the civil defence service and the organizations to which conscientious objectors may be assigned;

(b) The principle of priorities, in respect of public health work, or assistance work.

Financial status

19. The pay and allowances received by conscientious objectors are insufficient if they are in receipt of no other income. The Act of 20 April therefore establishes the right of every conscientious objector to an additional indemnity equal to the difference between the minimum means of subsistence and such other indemnities or allowances as are paid to the objector or to his rightful claimants. The indemnity may be awarded only if identical conditions to those laid down for the granting of minimum means of subsistence by the CPAS (welfare funds) are met and after the inadequacy of the objector's financial resources has been established.

Act of 29 June 1989

20. This Act is designed to spell out the consequences of renouncing conscientious objector status, by distinguishing two periods during which this is possible:

(a) Either during service: in this case, the former conscientious objector must complete a period of service in the army equal to the remaining period of service in civil defence or in another organization, a period which may not be less than six months;

(b) Or after completion of civilian service: in this case, he may chose between:

(i) Performing additional service in the army, whose length will be half the compulsory length of service for conscripts; or

(ii) Not performing this additional service, in which case the prohibitions associated with conscientious objector status remain applicable to him.

BRUNEI DARUSSALAM

[18 October 1989]
[Original: English]

21. The above-mentioned question does not apply to Brunei Darussalam since the recruitment of personnel for the Royal Brunei Armed Forces is based on voluntary service. At the moment, Brunei Darussalam has no plan to make army service compulsory for its population.

BURUNDI

[30 August 1989]
[Original: French]

22. Military service is not compulsory in Burundi. Recruitment into the army is on a voluntary basis and is open to any young person who applies in writing.

CANADA

[29 November 1989]
[Original: English]

23. The Canadian Armed Forces are, at present, staffed on a volunteer basis. Therefore, in the absence of compulsory military service in Canada, the question of conscientious objection to military services does not arise. During both World Wars, Canada did provide for compulsory military service. However, for both those conflicts, the legislation enacted for national service contained provisions for conscientious objectors either to perform alternative forms of service or to perform non-combatant services in the military forces.

24. There is currently no legislation recognizing a right to conscientious objection in Canada. However, section 2(a) of the Canadian Charter of Rights and Freedoms does recognize, as a fundamental freedom, the freedom of conscience and religion.

25. Canada recognizes that the right to conscientious objection is an individual right, constituting a legitimate exercise of the right of freedom of thought, conscience and religion as set out in article 18 of the International Covenant on Civil and Political Rights. Canada firmly supports the efforts of the United Nations to promote and protect the right of conscientious objection and to encourage all States to give recognition to this right.

CHAD

[10 October 1989]
[Original: French]

26. The Republic of Chad accepts and recognizes conscientious objection to military service, although conscientious objectors are subject to the following conditions:

(a) Young people who, prior to conscription, declare themselves totally opposed, on account of their religious or philosophical convictions, to the personal use of weapons may be authorized to fulfil their military obligations either in a non-combatant military unit or in a civilian organization performing work in the general interest;

(b) Young people who wish to avail themselves of these provisions are required to submit an appropriate application to the Ministry of National Defence, together with any supporting evidence they consider necessary. The Minister takes a decision on the basis of the documents submitted by the applicants. No appeal is possible against his decision;

(c) Young people whose application has been accepted are assigned to a non-combatant military unit for a period equal to the period of military service or to a civilian organization performing work of general interest for a period equal to, or twice the length of, the period of military service;

(d) In wartime they are assigned to service or assistance missions of national interest so as to ensure the equality of all citizens in the face of the common danger.

DOMINICAN REPUBLIC

[15 September 1989]
[Original: Spanish]

27. I am pleased to inform you that the Dominican Republic does not consider military service to be among the duties of its citizens, as it takes the view that young people must be educated with understanding and in the spirit of peace, justice and respect for all, as asserted by the General Assembly in its resolutions 2037 (XX) and 34/151 of 1965 and 1979 respectively.

28. Section II, article 9(b), of the 1966 Constitution of the Dominican Republic states as follows: "Every able-bodied Dominican citizen shall perform such civilian and military service as may be required by the country to ensure its defence and preservation".

29. Thus, the Dominican Republic complies in full with Commission on Human Rights resolution 1989/59 of 8 March 1989.

FINLAND

[20 December 1989]
[Original: English]

30. The Government of Finland finds the resolution a good foundation on which to further elaborate the final text.

31. Paragraph 5 of the resolution recommends to Member States that they establish independent and impartial bodies to determine the validity of the conscientious objection of persons seeking alternative forms of service. In Finland the procedure until the end of 1986 was that a special committee, the Conscripts Investigation Board, appointed applicants to alternative forms of service.

32. Finland adopted, at the beginning of 1987, a system which no longer requires individual determination of the sincerity of conscientious objection. A conscript whose conscience on serious religious or ethical grounds does not permit him to perform armed military service as defined in the Military Service Act, shall in time of peace, upon request, be exempted from armed service and, instead, be appointed to alternative non-combatant service in the armed forces or civilian service. The arrangement is governed by the Interim Amendment to the Unarmed Military Service and Civilian Alternative Service Act (647/85) passed for a trial period of five years i.e. until the end of 1991.

33. The resolution of the Commission on Human Rights does not include any aspects that would make it necessary to introduce changes in the earlier statement by the Government of Finland (letter 2623, dated 4 November 1987). There have been no amendments in the relevant Finnish legislation either.

34. It can still be noted that a draft proposal on the same issue was presented during the Follow-up Meeting of the Conference on Security and Co-operation in Europe in Paris in 1989.

MADAGASCAR

[13 February 1990]
[Original: French]

35. In this connection, it should be pointed out that the texts relating to national service currently in force in Madagascar appear to make no provision for exemption from national service on grounds of conscientious objection to service in the armed forces.

36. On the contrary, article 19 of the Constitution recognizes the principle of compulsory national service as a sacrosanct duty of all citizens.

37. The possibility of serving outside the armed forces is, however, recognized by Order No. 78-003 of 6 March 1978, article 4 of which states that "military personnel assigned to the armed forces may be transferred outside the armed forces, and vice versa, either at their own request or on official orders, provided that those assigned outside the armed forces have been found medically fit for military service."

38. Personnel found unfit for military service but fit for public service may be assigned outside the armed forces. The conditions under which such reassignments are decided are determined by the Ministry of Defence.

39. Unfitness for armed service, which may justify assignment outside the armed forces, does not appear to include refusal to serve on the grounds of conscientious objection. It might in fact prove difficult to accept the ideas contained in the resolution in so far as they introduce too many personal factors into the issue, thereby threatening to undermine the very substance of the Constitutional requirement to perform compulsory national service.

NEW ZEALAND

[13 October 1989]
[Original: English]

40. New Zealand does not have a system of compulsory military service, having repealed the National Military Act in 1973. Recruitment, whether into the New Zealand regular forces (which comprise about 12,800 men and women) or the territorials and reservists branch (comprising about 11,000 men and women) is on a voluntary basis. The question of "conscientious objection" therefore does not arise.

PANAMA

[30 August 1989]
[Original: Spanish]

41. The Republic of Panama has in the past provided the United Nations with information relating to the provisions of this resolution. The information was contained in document E/CN.4/Sub.2/1983/30/Rev.1, which dealt with the following issues:

"1. Existence of conscription:

'There is no conscription (in peacetime)', pursuant to the provisions of Act No. 29 of 1983, which constitutes the Organization Act of the Defence Forces of the Republic of Panama and establishes a specific set of regulations governing the military profession.

"2. Liability to service:

Article 306 of the Constitution states that all Panamanians are required to bear arms in order to defend national independence and territorial integrity; article 16 of the Constitution states that naturalized Panamanians are not required to bear arms against their country of origin.

...

"4. Recognition of conscientious objection: grounds recognized as valid; timing of claim for objector status.

There is no recognition of conscientious objector status (it should be borne in mind that military service is voluntary)."

42. Consideration of the issue of conscientious objection by the United Nations is of interest to the Government of Panama, but there is a need for procedures for protecting the integrity of citizens and at the same time ensuring territorial defence.

43. The Republic of Panama considers that conscientious objector status should not apply in wartime.

PHILIPPINES

[3 May 1990]
[Original: English]

44. The Republic of the Philippines espouses the democratic dogma and principles of republicanism. As such it upholds the rights and freedoms of all persons regardless of race, colour, creed, sex or social status.

45. In recognizing such rights and freedoms, it places, too, the freedom of conscience within the ambit of its fundamental precepts. Not only that, freedom of conscience which embraces, among others, the freedom of religion is of paramount standing with the other civil and political rights. But the inherent powers of the State, however, may be resorted to and validly exercised when required by public necessity, for the continued existence of the Government, and the general welfare, without disregard to due process of law. It is only then that a person's rights can be curtailed.

46. The Commission on Human Rights resolution 1989/59 of 8 March 1989 is of laudable significance in upholding the right of persons to refuse as conscientious objectors to be in the military and police service or to be used to enforce apartheid. This Government applies the principle that all forces of Governments must be designed, organized, established and used for the protection of the people and the State. Nevertheless, the extent of the so-called protection should never justify the expulsion and even extinction of any individual, group or class of persons from society.

47. This Republic has lived up to its fundamental precepts, and will continue to do so, for it values the dignity of every human person and guarantees full respect for human rights as postulated in the following constitutional proviso:

> "Sect. 11. The State values the dignity of every human person and guarantees full respect for human rights." (1987 Constitution of the Philippines, art. II).

48. Along this line, an overview of the Philippine concept of its military and police forces is worth reflecting on.

An overview of the Philippine Military and Police Forces

49. The Philippines has an organized standing armed force known as the Armed Forces of the Philippines (AFP) which is composed of a citizen armed force, in consonance with the following fundamental precept:

> "Sect. 4. The Armed Forces of the Philippines shall be composed of a citizen armed force which shall undergo military training and serve as may be provided by law. It shall keep a regular force necessary for the security of the State." (Ibid., art. XVI).

50. To give substance and meaning to the aforesaid proviso, President Corazón C. Aquino issued Executive Order No. 264 on 25 July 1987 providing for the Citizen Armed Force to be composed of all reservists, and officers and enlisted men on inactive status. Reservists called to active duty shall serve with the standing force.

51. The AFP is constitutionally envisioned to be the protector of the people, and its establishment and continued existence is founded on the imperative necessity to secure the sovereignty as well as the integrity of the national territory of the Republic as enunciated in the following fundamental principle:

> "Sect. 3. XXX. The Armed Forces of the Philippines is the protector of the people. Its goal is to secure the sovereignty of the State and the integrity of the national territory." (Ibid., art. II).

52. The 1987 Constitution lays emphasis on the primacy of serving the interest of the people and the protection of their lives, rights and property as postulated hereunder:

> "Sect. 4. The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State, and in the fulfilment thereof, all citizens may be required, under the conditions provided by law, to render personal military or civil service." (Ibid.).

53. Be that as it may, the inherent police power of the State, as earlier mentioned, cannot be overlooked for it may be exercised even against all other fundamental rights of man. Police power rests upon public necessity and applies equally to all. Under this context a citizen may be compelled to render service in the military, police or other defence forces of the Government.

54. It is relevant to note that, although the 1935 and 1973 Constitution laid emphasis on the defence of the State, which concept then could easily be construed to justify an offensive to the people on grounds of national defence, yet these did not give occasion to compel citizens to join the defence forces of the Government for the purpose of subserving political whims, much less to enforce apartheid or other forms of discrimination. Section 2, article II of the past two Constitutions aforementioned reads:

> "Sect. 2. The defence of the State is a prime duty of the Government, and in the fulfilment of this duty all citizens may be required by law to render personal military or civil service."

55. In one case, the Supreme Court of the Philippines upheld the Constitutionality of Commonwealth Act No. 1, known as the National Defense Law, as being in faithful compliance of Section 2, article II, of the 1935 Constitution. In convicting the accused for their wilful and unlawful refusal to register in the military service in violation of section 60 (repealed by C.A. No. 70, sect. 1) of said Act, the Court said:

> "The duty of the Government to defend the State cannot be performed except through an army. To leave the organization of an army to the will of the citizens would be to make this duty of the Government excusable should there be not sufficient men who volunteer to enlist therein.
>
> "The circumstance that appelants have dependent families to support does not excuse them from their present duty ... because, if such circumstance exists, they can ask for deferment in complying with their duty ... ". (Sects. 65 and 69 Commonwealth Act No. 1; People vs. Lagman, 66 Phil. 14).

56. In the last analysis, what justifies compulsory military service is the defence of the State, whether actual or whether in preparation to make it more effective, in case of need. The duties of citizenship must apply equally to all.

57. The Edsa Revolution saw the rebirth of a democratic Republic and the restoration of the long-lost freedom of the Filipino people. In the process, the 1986 Freedom Constitution came to light and paved the way for the orderly transitional Government. As these historic events travelled the Philippine horizon, there also emerged the spontaneous formation of civilian defence organizations in the various parts of the country such as the Alsa Masa in Davao and other vigilante groups. The emergence thereof was presumably to repel terrorism, insurgency and other forms of lawlessness which threaten the peace and order and security of the nation. The civilian groups, some of which came into existence even during the martial rule era, are purely voluntary and civilian in character and the operational activities thereof centre within the respective territorial jurisdiction on the regional, provincial, city, municipality or barangay level. However, abuses of these groups were rampant.

58. With this development, the 50-member Constitutional Commission entrusted with the task of fashioning the 1987 Constitution to accelerate establishment of a truly significant constitutional Government saw the need to control such organizations through legal measures. Hence, with the birth of the 1987 Constitution came the dismantling of private armies or groups not recognized by the duly constituted authority as well as the dissolution or conversion of all paramilitary units to the regular armed force in accordance with the following constitutional proviso:

> "Sect. 24. Private armies and other armed groups not recognized by the duly constituted authority shall be dismantled. All paramilitary forces, including Civilian Home Defence Forces not consistent with the Citizen Armed Force established in this Constitution, shall be dissolved or where appropriate, converted into the regular force." (Ibid., art. XVIII).

59. In compliance with the aforesaid mandate, Executive Order No. 275 was issued by the President on 15 July 1987 providing for the gradual and orderly dissolution of all paramilitary units, including the Civilian Home Defence Forces.

60. It will be noted that the Civilian Armed Force is organized into Geographical Units throughout the country commonly known as CAFGU, according to the Implementing Rules and Regulations to Executive Order No. 264 of 25 July 1987 issued by the Department of National Defence. The CAFGU consist of a cadre of officers and men in the active force and qualified reservists residing in the locality, and categorized into, among others, the CAFGU on Inactive Status which has the great majority, and the CAFGU Active Auxiliary consisting of volunteers called upon to complement the operations of the regular Armed Forces of the Philippines or to support the regular force formations or units in its locality.

61. As part of the measures of control and supervision of civilian organizations the corresponding Guidelines on Civilian Volunteer Self-Defence Organizations was formulated on 30 October 1987 by a Government sub-committee

created for the purpose composed of the Commission on Human Rights, the Department of Local Government and the Department of National Defence, wherein the GHQ AFP Guidelines/letter directive of 1 April 1989 regarding the matter was considered and incorporated therein with modifications. Regular reporting and monitoring mechanisms covering the operational activities of all CVOs by the Government agencies concerned are called for under the guidelines to curb control and occurence of human rights violations and other transgressions of the law.

62. On the other hand, there is also an organized Philippine Police Force which is national in scope and civilian in character as mandated, thus:

> "Sect. 6. The State shall establish and maintain one police force, which shall be national in scope and civilian in character, to be administered and controlled by a National Police Commission." (Ibid., art. XVI).

63. It is entrusted with law enforcement and the maintenance of peace and order in the community. As in the military force, any citizen may be recruited to the police service upon application, and after meeting the qualification requirements, including examination and training.

64. Nowhere within the confines of the fundamental instrument of this Republic, statutes, rules and regulations relevant to the Government defence forces can be inferred the concept of compulsory military or police service for the enforcement of apartheid or other forms of discrimination. An overview of the Philippine Military and Police forces, to include paramilitary units and the so-called Civilian Volunteer Organizations, shows that the primordial concepts are the protection of the people and the defence of the State.

Freedom of conscience respected

65. Objections by reason of conscience, as can be gleaned from the proceedings of the 1986 Constitutional Commission, include sincere, real and honest beliefs founded on religion as well as genuine personal convictions that one should not kill or take away life under any circumstance. But this does not or cannot justify altogether non-conscription into the military service considering that the defence of the State is also a prime duty of the citizen. Substitute service or non-combatant duties may, however, be possible for conscientious objectors - a situation where freedom of religion or conscience is given importance, otherwise the concept of certain freedoms embodied in the Bill of Rights will be diminished. But this is not a guarantee that they will not fight or face combat duties in battlefields, military operations or related activities. History reveals that war is sometimes won by remnant forces, and even non-combatant troops. Hence, anyone may have to take up arms when demanded by State or public necessity even in times of peace thereby upholding, in the final analysis, the paramount status of the inherent police power of the State over all fundamental rights of man. (IV Records, 1986 Constitutional Commission).

66. Every Government is morally, if not constitutionally, bound to preserve and protect the human species, without social distinction, thereby upholding and respecting the rights and freedom of every individual, which includes a person's freedom of conscience. In like manner, every citizen is duty-bound

to serve and defend his or her country and people. But the duty to serve in the defence forces of the Government should not be subject to compulsion and pain of penalty by the State especially when the exercise of such service collides with one's conscience. More so, when the service is to enforce apartheid. No Government should entertain the concept of and practice of apartheid as part of its political ideology for it is not only a moral evil but a degradation of the human person. No man is in a position to cause, or in any manner assist in, the expulsion of another by reason of colour, race, creed, sex or social status.

67. A Government is an organized system of society and its laws are enacted for the purpose of, among others, maintaining the continued existence of a united, humane and orderly society. A political institution which adopts or condones the practice of apartheid is not and can never be considered as just and humane and as such, it cannot and can never produce a just, humane and orderly society.

68. It is therefore within the context of morality, humanity and justice that the aforementioned United Nations resolution is considered as of paramount significance. Thus, any person compelled to leave his country of nationality for refusal to assist in the enforcement of apartheid through service in the military or police force of one's country is justified to seek refuge in any other State in the spirit of the Declaration on Territorial Asylum. Member as well as non-Member nations of the United Nations are morally and duty-bound to open their door for asylum or to grant a safe exit under the circumstance. Any grant of refuge, asylum or safe passage is within the bounds of the law and therefore cannot be considered an interference in the internal political affairs of any other State or an invasion of their sovereignty.

PORTUGAL

[8 November 1989]
[Original: French]

69. With reference to the request for observations made in Commission on Human Rights resolution 1989/59 on conscientious objection to military service, the Government of Portugal would like to transmit the following information:

(a) The Government of Portugal attaches great importance to the question of conscientious objection to military service, and has followed the activities of the United Nations in this sphere, and of course Commission on Human Rights resolution 1989/59, with particular attention. For this reason, Portugal was a sponsor of the resolution and thus supports the principles of the resolution, which was adopted without a vote. These principles are already reflected in the relevant national legislation, an outline of which has already been provided in document E/CN.4/1989/30;

(b) With regard to paragraphs 3 and 7 of the resolution, we shall simply focus on more recent developments relating to the performance of alternative civilian service, as provided for by article 276 of the Constitution and by Act No. 6/85 of 4 May 1985 (arts. 4 et seq.);

(c) Decree-Law No. 91/87 of 27 February 1987 defined the areas in which civilian service may be performed, its duration and structure, the remuneration and social rights of conscientious objectors, their duties and

their status as regards foreign travel. Furthermore, a Civilian Service by Conscientious Objectors Office was established within the Office of the President of the Council of Ministers;

(d) Pursuant to article 2 of the above Decree-Law, civilian service has to be performed in areas such as the following: assistance in hospitals or health centres; public health protection; campaigns to combat the use of tobacco, alcohol and drugs; assistance to children and elderly and disabled persons, and to disaster victims; environmental protection, protection of the cultural and natural heritage; collaboration in literacy campaigns and campaigns for the promotion of culture. These services are of value to society and may be performed abroad, if the objector gives his consent;

(e) The maximum duration of civilian service, which is set by an Order of the Prime Minister, is equivalent to that of military service performed in the navy, and the minimum duration is equivalent to that performed in the army;

(f) The Civilian Service by Conscientious Objectors Office plans, organizes and co-ordinates at the national level the activities connected with the implementation of the Decree-Law; it is required to compile a national register of conscientious objectors and to keep an up-to-date file of organizations to which they may be assigned;

(g) Conscientious objectors are paid wages and allowances equal to those paid to persons performing compulsory military service.

(h) Conscientious objectors are also entitled to the following: an identity card; food and lodging provided by the State when they receive hospital treatment; the rights and guarantees to which any individual performing compulsory military service is entitled by law, provided they are compatible with the nature of civilian service.

SAUDI ARABIA

[28 November 1989]
[Original: English]

70. There is no obligatory military service for the citizens of Saudi Arabia; therefore the subject-matter of "conscientious objection to military service" is of no concern to the Saudi Arabian authorities.

SPAIN

[6 November 1989]
[Original: Spanish]

71. The right to conscientious objection has been viewed with the greatest interest by the Spanish State. Clear evidence of this is provided by the fact that Spain co-sponsored Commission on Human Rights resolution 1989/59 of 8 March 1989. Furthermore, we consider that the right to conscientious objection and the promotion of, and respect for, this right constitute an important test in the progress and development of the rights known as "third-generation rights". At the root of democracy lies respect for persons holding dissenting opinions, including persons who express their disagreement with the democratic system itself. There is little doubt that the right to conscientious objection falls within the more general right to hold dissenting opinions and thus within the above-mentioned third-generation rights.

72. There are in force three Spanish laws which protect conscientious objection in Spain:

(a) Organization Act No. 8/1984 of 26 December 1984, establishing the regulations for appeals in the case of conscientious objection;

(b) Act No. 48/1984 of 26 December 1984, establishing regulations relating to conscientious objection and alternative social service;

(c) Royal Decree No. 20/1988 of 15 January 1988, approving the regulations relating to social service by conscientious objectors.

73. The philosophy underlying this legal regulation of the right to conscientious objection, as set forth in article 30 of the 1978 Constitution, is reflected in the preamble to Act No. 48/1984. In the preamble it is stated that constitutional recognition of ideological and religious freedom and freedom of worship entails, over and above protection of the right of persons to uphold the ideology or religion they freely choose, establishment of the right of conformity of personal behaviour, provided it does not jeopardize any social asset, to the convictions held. The establishment of this right to align actual behaviour with personal convictions extends to the military obligations which the Constitution imposes on Spaniards, obligations whose effective performance is, for some citizens, at variance with the ideological or religious convictions which they profess. Thus, Spanish law establishes as grounds for exemption from military service for reasons of conscience not only grounds of a religious nature, but also grounds of an ideological, philosophical or similar character. It is the incompatibility between military activities and the citizen's convictions, and not the nature of those convictions, which justifies exemption from military service.

74. The Spanish Constitution in fact establishes as a fundamental principle equality and non-discrimination between citizens on grounds of their beliefs or ideologies, and it is accordingly necessary to establish, for conscientious objectors, the performance of alternative social service, whose duration under Spanish law does not exceed 50 per cent of the duration of active military service.

(The text of the legislation referred to by the Government is available for consultation in the language of submission (Spanish) in the files of the Secretariat.)

SWEDEN

[20 December 1989)
[Original: English]

75. The Swedish military defence is based on conscription of men. The Act on Compulsory Military Service (1941:967) has the character of a general compulsory law which clearly prescribes that Swedish men from 18 to 47 years of age are liable for military service and may be called up for training and other service. There are few exceptions to the rule that all Swedish men are liable for military service. Exemption from carrying out military service may be granted for physical and/or mental reasons. In addition, by virtue of the Act on Non-combatant Service (1966:413) there are possibilities for persons liable for military service to perform non-combatant service instead of military service.

76. According to section 1 of the Act on Non-combatant Service, this service may be performed instead of military service "if it can be assumed that the use of weapons against another person is so irreconcilable with the serious personal convictions of the conscript that he will not fulfil his military service".

77. In section 2 of the same Act, it is laid down that a non-combatant conscript "shall perform service in activities which are important for the society in times of military preparedness and war. This service shall take place in a government or local government authority or in an association or institution".

78. According to the Act on Non-combatant Service, the non-combatant conscript is liable to do basic training and refresher training and the total training period shall be no less than 395 and no more than 420 days.

79. Applications for permission to carry out non-combatant service are examined by the Military Service Review Board. The applicant is called to an interview with an investigating official. The purpose of this interview is to clarify whether the applicant's views on the use of weapons against another person tally with the intentions of the Act on Non-combatant Service. The applicant is then given the opportunity of expressing an opinion on the written report and correcting any possible misunderstandings. The official carrying out the investigation then adds a comment in which he/she recommends the approval or rejection of the application. After this, it is the responsibility of the Military Service Review Board to take a decision on the matter. The decision of the Military Service Review Board is taken by a delegation consisting of a chairman and lay members. Appeals are lodged with the National-Service Board of Appeal for the Total Defence, which also includes lay members.

80. In 1988, 3,437 persons applied for non-combatant service and 79.8 per cent were granted non-combatant service while 20.2 per cent could not be granted such service because, among other things, their views showed that they did not have such an unconditional repudiation of the use of weapons against another person as is required for approval according to the Act on Non-combatant Service. About 95 per cent of applicants applying for religious reasons are granted permission to do non-combatant service.

81. Four hundred and fifty-eight cases of conscientious objection were reported to the Enrolment Board of the Armed Forces in 1988. More than half of these conscripts had not applied for non-combatant service. It is the customary practice to impose a conditional sentence and fines on a person refusing military service for the first time. In the case of repeated refusal, a prison sentence, as a rule for a term of four months, is generally imposed. However, the rules on conditional release mean that the person in question only needs to serve half the prison term. According to practice, the Government usually prescribes, by virtue of section 46, sub-section 1, of the Act on Compulsory Military Service, that a conscript who has received such a sentence shall not be called up for military service until further notice.

82. By virtue of section 46, sub-section 2, of the Act on Compulsory Military Service, the Government, or an authority designated by the Government, may decide that a person liable for military service shall not be ordered to carry out service in accordance with the aforementioned Act until further notice

or during a certain period, if that person declares that he will not carry out his military service and, on account of his membership of a religious sect, it can be assumed that he will not carry out his military service or non-combatant service. Citing this provision, the Government has prescribed in section 69 of the Decree concerning conscripts' military service, etc. (1969:380) that the Enrolment Board of the Armed Forces shall decide not to enforce military service on a conscript who is a member of the Jehovah's Witnesses sect. A precondition for such a decision is that it can be assumed the conscript will not carry out any form of compulsory service.

UNITED STATES OF AMERICA

[9 January 1990]
[Original: English]

83. In 1973, the United States abolished conscription and adopted an all-volunteer military service system. Therefore, the issue of conscientious objection has become a theoretical one for the United States.

84. Since the 19th century, United States law has provided for some form of conscientious objection to military service, and these laws would apply in the event that the United States were to reinstate conscription. Under United States conscientious objection law, an objector must be opposed on the basis of religious or ethical belief to "war in any form", rather than possess a selective opposition to a particular war. Where an individual can establish status as a bona fide conscientious objector, an alternative form of service is provided for him which is not punitive in nature. Where a person objecting to military service cannot establish that he holds a sincere objection based on religious or ethical beliefs and subsequently refuses to perform military service, or where a bona fide conscientious objector refuses to perform alternative non-military public service, United States law provides for maximum penalty of five years' imprisonment and a fine of 10,000 United States dollars.

85. The United States views conscientious objection as a legitimate expression of the right to freedom of thought, conscience and religion, and believes that it should be respected by States when it flows from religious or ethical beliefs which are sincerely held by a person. Nevertheless, the United States does not believe that international law at this time requires States to grant conscientious objector status.

VENEZUELA

[13 March 1990]
[Original: Spanish]

86. In reply, and taking into consideration the content of this resolution, it is important to state that in our national legislation, and specifically in the Conscription and Military Recruitment Act and the regulations relating thereto, there is no provision which allows conscientious objection to military service to be taken into account as a ground for exemption from performance of such service.

87. The benefit of deferment of performance of active military service is granted in Venezuela on grounds of health, marriage, study in institutes for the training of ministers of religion duly authorized and registered with the

Ministry of Education, and other grounds unrelated to that referred to in resolution 1989/59 of the Commission on Human Rights.

88. Article 65 of the National Constitution provides that all persons have the right to profess their religious faith and to engage in worship, either privately or publicly, provided that it is not contrary to public order or decency. This article further provides that no one may invoke religious beliefs or disciplines in order to evade compliance with the law or to prevent another person from exercising his rights. Article 53 of the Constitution provides that military service is compulsory and shall be performed without distinction as to class or social status in the terms and on the occasions established by law.

89. From the foregoing it is apparent that conscientious objection to military service is not expressly provided for in Venezuelan law and moreover would be difficult to implement, since our law provides that military service is compulsory and that reasons deriving from religious beliefs or disciplines may not be adduced in order to avoid compliance with the law.

90. Nevertheless, taking into consideration the elements contained in resolution 1989/59 of the Commission on Human Rights, elements which have been gaining ground in the international sphere, this question will be kept under consideration with the aim of exploring the possibilities of offering valid alternatives for conscientious objectors.

YUGOSLAVIA

[5 March 1990]
[Original: French]

91. Within the system of rights and duties of Yugoslav citizens with regard to general popular resistance, military service is of particular importance, and for this reason the Yugoslav Constitution, in article 241, provides that "military service by citizens shall be universal".

92. In the light of this principle, together with the principles defined by the Yugoslav Constitution concerning equality of rights and the duty of all citizens regardless of their nationality, race, sex, language, religion, education or social status, the Military Service Act (Official Gazette of Yugoslavia, No. 64/85 of 2 December 1985) provides that all Yugoslav citizens having a general ability to work have the right and duty to do their national service and, while performing this service, to prepare, train and organize themselves for armed conflict, the performance of other functions in the Yugoslav armed forces and participation in other forms of general popular resistance against the enemy in the event of aggression or other dangers.

93. In view of the foregoing, military service may be considered both as the duty and as the right of every Yugoslav citizen to prepare himself for, and participate in, a war of general popular defence.

94. Furthermore, the equality of rights of all persons before the law imposes on them the obligation to contribute in the same way to the protection and defence of Yugoslavia. Any violation of these rights or duties would place the persons concerned in an unequal position, which would be unacceptable from the standpoint of the constitutional rights and duties of all citizens.

95. Bearing in mind the fact that certain religious communities forbid their followers to bear or use arms, it has been accepted that some conscripts might be trained to perform certain unarmed functions in the military forces which do not require the carriage and use of arms.

96. In this connection, the Military Service Act (Official Gazette of Yugoslavia No. 26/89 of 21 April 1989) has been amended and supplemented to enable members of religious communities which forbid the carriage and use of arms to do their military service without bearing arms. The duration of their military service is 24 months, other rights and duties remaining identical with those of other conscripts. It should be pointed out that the normal duration of military service is 12 months.

II. OTHER INFORMATION RECEIVED

A. United Nations bodies

UNITED NATIONS CENTRE AGAINST APARTHEID

[17 November 1989]
[Original: English]

97. The United Nations Centre against Apartheid draws attention to the report of the Special Committee against Apartheid (A/44/22-S/20901), which was introduced at the forty-fourth session of the General Assembly. The relevant information is contained in Part II, section C, subsection 5, and in Part IV, section C, of this report.

(A copy of that report in English is available for consultation in the files of the Secretariat.)

UNITED NATIONS OFFICE OF THE DISASTER RELIEF CO-ORDINATOR

[17 August 1989]
[Original: English]

98. Although UNDRO's mandate does not relate directly to this subject, it stated that relief work on disaster situations would seem to be a form of alternative service that young persons in many cases would accept.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES

[18 December 1989]
[Original: English]

99. The Office of the United Nations High Commissioner for Refugees submitted general views in 1982 (E/CN.4/Sub.2/1983/30/Rev.1, p. 32) and in 1987 (E/CN.4/1989/30, p. 17) on this specific issue of conscientious objection to military service.

100. More recently UNHCR has had the occasion to examine further the relation between conscientious objection to military service and refugee status for the purpose of preparing and submitting an amicus curiae brief in support of two asylum-seekers who were conscientious objectors (UNHCR amicus curiae filed in support of petitioners in Canas Segovia versus United States Immigration annd Naturalization Services in the United States Court of Appeal for the 9th Circuit). The position in this brief reflects the most authoritative and detailed statement to date by UNHCR, superseding the views expressed previously to the Special Rapporteur, and should be referred to where UNHCR's understanding of the issue is concerned.

101. In summary the main point made in this brief is that while lawful punishment for refusal to do military service does not in itself constitute persecution of an individual, conscientious objection to military service,

based on a genuinely held belief, may well lead to situations exposing the person concerned to persecution recognized under the 1951 Convention relating to the Status of Refugees as founding a claim to refugee status. This is particularly the case, for example, where any punishment involved is disproportionate or is because of the political, religious or moral beliefs of the individual. Objection to service on the grounds of political belief also has a particular significance in the refugee context where the military action in question is condemned by the international community. In underlining this point, UNHCR also takes into consideration the General Assembly resolution 33/165 (of 20 December 1978) on the status of persons refusing service in military or police forces used to enforce apartheid. Conscientious objectors may also in the individual case be considered as refugees if, regardless of their actual situation, their objections are interpreted by their country of origin as an objective "political act" resulting in the likelihood of treatment amounting to persecution.

102. Over recent years an increasing number of States have introduced legislation or administrative regulations aimed at establishing an alternative service (i.e. of a civilian nature). The availability of such an alternative can affect a conscientious objector's claim to refugee status. However, the questions both of access to such an alternative service and of its "non-punitive" character have also to be carefully examined in the light of the objective situation prevailing in the country of origin.

B. Specialized agencies

INTERNATIONAL LABOUR OFFICE

[4 December 1989]
[Original: English]

103. As we had had the occasion to state earlier in connection with the report on the question, compulsory military service is excluded from the definition of "forced or compulsory labour" for the purposes of the Forced Labour Convention 1930 (No. 29).

104. In the successive general surveys made since 1962 of the implementation of the instruments on the abolition of forced labour, the Committee of Experts on the Application of Conventions and Recommendations has noted that many countries provide for the exemption from military service of conscientious objectors, but may require them to perform alternative service. The Committee has considered that in such cases conscientious objectors are in a more favourable position than in countries where their status is not recognized and where refusal to serve is punishable with imprisonment.

105. It follows from this consideration that, in accordance with article 19, paragraph 8, of the ILO Constitution, the provisions of Convention No. 29 should not be deemed to affect the more favourable conditions accorded to conscientious objectors through the requirement to perform alternative service.

C. Intergovernmental organizations

COMMISSION OF THE EUROPEAN COMMUNITIES

[28 November 1989]
[Original: English]

106. The European Community does not dispose of any specific competence in this matter, although it is aware of the political nature of this probem and of the manner in which the difference between national legislations concerning the status of conscientious objection can be felt by the citizens of the Member States. Nevertheless, one of its institutions, the European Parliament, through its powers of deliberation and control takes action in favour of fundamental rights within the European Community and in third countries.

107. The widening of the mandate of European Parliament members after the election by universal and direct suffrage in 1979 has reinforced the political impact of their activities and engagement in favour of human rights. Concerning conscientious objection to military service, two resolutions have been adopted by the European Parliament:

(a) Resolution on conscientious objection (7 February 1983 - OJ C 68 of 14 March 1983);

(b) Resolution on conscientious objection to military service and the service of replacement (13 October 1989). You can find this resolution enclosed with this letter.

(The resolutions referred to above are available for consultation in the files of the Secretariat.)

D. Non-governmental organizations

COUNCIL OF EUROPEAN NATIONAL YOUTH COMMITTEES

[31 August 1989]
[Original: English]

108. Despite the wealth of reports, recommendations and accords which have supported the unconditional right to genuinely conscientiously object to military service, this question is interpreted in many different ways across Europe.

109. The list of legitimate reasons for conscientious objection, differing lengths of service, the punitive nature of service and the level of bureaucracy vary enormously from country to country. This had had major implications for conscientious objectors apart from the offputting difficulties of red tape and complicated procedures.

110. As has been underlined at the United Nations, the role of youth in the promotion and protection of human rights, peace and understanding is of the utmost importance. We are also in the age of bringing Europe closer to young people and removing barriers that exist to their ability to work and travel freely within Europe. This freedom should apply to conscientious objectors and to all other young people.

111. At present some countries have systems whereby the period of objection can be spent in service in another country. However, due to reasons already stated it is at present not possible to develop a uniform system throughout Europe. The opportunity to complete service due to objection in another State would be both formative for the young person and for the creation of a tolerant Europe. Surely in the future this system could be introduced at an international level.

EUROPEAN BUREAU FOR CONSCIENTIOUS OBJECTION

[31 January 1990]
[Original: English]

112. The Organization submitted a copy of its Bulletin "The Right to Refuse to Kill". The Bulletin is available for consultation in the files of the Secretariat.

INTERNATIONAL FEDERATION TERRE DES HOMMES

[22 December 1989]
[Original: French]

113. The problem of conscientious objection does not directly concern the activities of IFTDH. However, it cannot be dissociated from the concept of war, whose deadly effects have very often been experienced by our organization in connection with its efforts concerning all regions of the world.

114. Armed conflicts jeopardize and delay efforts to achieve development and there is a prejudicial interrelationship between underdevelopment and war. It is the civilian populations, and in particular children, who lose most in war in terms of suffering and death. And the consequences of an armed conflict may be very cruel for the combatants themselves and their families.

115. For these reasons, IFTDH is in favour of the possibility of freedom of choice, for those who do not wish to bear arms, to perform civilian service in a useful and necessary form for their community and their country.

116. Many conscientious objectors make a very valuable contribution as volunteers in several movements which are members of IFTDH. Some movements which are members of IFTDH, including Terre des Hommes-France, for example, regularly employ conscientious objectors under the civilian service in force in their country.

FRIENDS WORLD COMMITTEE FOR CONSULTATION

[30 January 1990]
[Original: English]

117. Friends World Committee for Consultation (FWCC) warmly welcomes the recognition of the right to conscientious objection in resolution 1989/59. Quakers have for more than 300 years corporately refused to participate in all wars believing that war is contrary to the teachings and spirit of Christ and therefore it is wrong to kill or to train people to kill. It is on these grounds that Quakers claim the right to conscientious objection to military training or service, not only for ourselves but for all who share our beliefs.

118. FWCC is concerned that not all States respect the right to conscientious objection to military service and that persons refusing service are imprisoned or otherwise punished. More alarming are the frequent reports of forced conscription through kidnapping and street round-ups. Some of those forcibly recruited are young boys under the age of conscription.

119. At the Commission on Human Rights forty-seventh session in 1991 the following points should be considered:

(a) The right to conscientious objection should include not only religious or similar motives but also sincerely held ethical, moral and humanitarian motives;

(b) States should also recognize the right of an individual to be released from the armed forces on grounds of conscience;

(c) States should reaffirm that no person can be compelled to serve in the armed forces where such service is likely to include genocide, enforcement of apartheid, illegal occupation of foreign territory, gross violations of human rights, use of weapons of mass destruction or weapons which have been specifically outlawed by international law or to use means which cause unnecessary suffering. Furthermore, States should respect humanitarian law with regard to recruitment and participation of children in armed conflicts. In resolution 1989/59 the first preambular paragraph reaffirms "... that all Member States have an obligation to promote and protect human rights and fundamental freedoms and to fulfil the obligations they have undertaken under various international human rights instruments, the Charter of the United Nations and humanitarian law";

(d) States should disseminate information about the right to conscientious objection, particularly through youth organizations and establish independent bodies to decide on cases of conscientious objection;

(e) The provisions concerning alternative service should be elaborated. In particular, such service should promote peace, justice, sustainable development and international understanding. Alternative service should not be used as a means of punishment;

(f) Given that States generally do not seem to refuse conscientious objectors requiring asylum it would be desirable if this was reflected in the resolution;

(g) Annexes I, II and III in the report by Mr. Eide and Mr. Mubanga-Chipoya entitled "Conscientious objection to military service" (E/CN.4/Sub.2/1983/30/Rev.1) need to be updated.

INTERNATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS

[8 August 1989]
[Original: French]

120. We would remind you of our observations dated 22 November 1984, a copy of which we append. We still associate ourselves with the conclusions of the report prepared by Mr. Eide and Mr. Mubanga-Chipoya (E/CN.4/Sub.2/1983/30) and with its recommendations.

121. IADL recognizes the right of every person to refuse to serve in military or police forces, which are used throughout the world to perpetuate actual or latent violence, and endorses the various United Nations resolutions calling on Member States to grant asylum or the right of transit to another State, in the spirit of the Declaration on Territorial Asylum, to persons forced to leave their country of origin solely because, on the grounds of conscientious objection, they refuse to contribute to the execution of repressive measures in their country by serving in military or police forces. IADL also supports the proposals aimed at establishing alternative forms of service offering civil or non-combatant status, in the public interest and not as a penalty.

122. Since the goal of IADL is "law in the service of peace", it strongly supports disarmament in order to remove all threats of war once and for all and ultimately to create conditions in which military service would become unnecessary.

123. IADL also wishes to inform you of an interesting proposal by two Belgian ecologist members of parliament, Mr. Van Dienderen and Mr. Daras, who have submitted to the Chamber of Representatives a bill "amending the income tax code and establishing a Taxes for Peace Fund". Without making recognition of conscientious objection subject to any particular procedure, this bill is aimed at enabling any citizen specifically to exercise his freedom of opinion and to decide that a part of his financial contribution to society will be devoted to peace and development projects. Several countries have legalized objection to military obligations, i.e. military service. This bill would seem, in our opinion, to deserve attention since it is now aimed at legalizing objection to tax obligations for military purposes, without thereby establishing an exceptional status.

(The observations referred to above are available for consultation in the files of the Secretariat.)

REGIONAL COUNCIL ON HUMAN RIGHTS IN ASIA

[28 November 1989]
[Original: English]

124. The Regional Council on Human Rights in Asia welcomes the Commission on Human Rights resolution 1989/59 entitled "Conscientious objection to military service", and applauds the initiatives of the Commission to seek effective mechanisms to promote fully the exercise of the basic freedom of thought, conscience and religion.

125. The Council is particularly concerned over the question of conscientious objection to military service. In the ASEAN region, the region the Council has chosen to focus its attention on, regrettably, the right to conscientious objection to military service is neither recognized by law nor in practice.

126. In Singapore, for instance, objection to military service on conscientious grounds is not recognized by the law relating to military service. The Enlistment Act, which provides for conscription (national service) of all male adults reaching the age of 18 for periods of two and two-and-a-half years, has a general provision for exemption from the service. The provision contained in Section 28 of the Act reads as follows: "The proper authority may by notice exempt any person from all or any part of the liability of that person under this Act".

127. It will be seen that the section does not provide any grounds upon which a person may seek exemption and that the section gives a general power to the proper authority to exempt anyone from national service. "Proper authority" under the Act is the "Armed Forces Council and any person or body appointed by it by name or by office for the purposes of the whole or any part of the Act".

128. By regulation 25 of the Enlistment Regulations made under the Act, certain factors are set out which the proper authority may take into consideration in considering applications for exemption. Regulation 25 reads as follows:

> "In determining an application for the grant of a postponement or exemption from any liability under the Act, the proper authority may take into consideration the following:
>
> (a) the requirements of the defence, economy and education system of Singapore;
>
> (b) exceptional hardship of the applicant or members of his household;
>
> (c) the extent to which the business responsibilities or interests of the applicant cannot be carried on in his absence".

129. It is therefore quite clear that objection to national service on conscientious grounds is not a ground upon which a person may be exempted from national service.

130. The Philippines, too, does not recognize the right to conscientious objection. The Philippine Constitution requires military service:

> "Article II, Section 4. The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service".

131. All other previous constitutions of the Philippines (1935 and 1973 Constitutions) contained similarly worded provisions. The rationale behind the said provision, which originated with the 1935 Constitution is contained in the Report of the Committee on National Defence and was as follows:

> "The volunteer system is not suitable for a poor country which cannot afford to pay the army well enough to attract well-qualified, able-bodied young men to the service. The volunteer system involves the objectionable feature of entrusting the sacred mission of defending the country to men lacking in capacity who have proved failures in other fields of activity. The volunteer system is undemocratic, because the cannon fodder, with very few exceptions, consists of proletarians. The sons of the wealthy can evade the sacred duty of defending their country, though it is they who enjoy the advantages obtained through the services rendered by the blood spilled by men to whom fortune has been unkind. A high morale, which only a person fighting for an ideal can possess, is very necessary in an army, and with mercenaries fighting for a pittance, such a morale cannot be attained." (Bernas, The 1973 Philippine Constitutution, Part I, 1983 Edition, p. 74.)

132. The constitutional provision on mandatory military service is implemented by Philippine Commonwealth Act No. 1, entitled "The National Defense Act". Section 3 of said Act provides:

> "Military service shall be obligatory for all citizens of the Philippines, and the methods and procedure for the classification, selection, examination, induction, training, and release of all citizens from their military obligations shall be prescribed in Title III of the Act." (Approved 31 December 1935.)

133. In addition, Section 51 of said Act also states that: "All Filipinos are liable to military service."

134. Filipinos may be exempted from military service only for reasons of being physically unfit, as determined by a military board of medical officers. Deferments may be granted only for a period of one year and only for the following reasons:

(a) Those who are indispensable to the support of their dependent families;

(b) For agricultural reasons;

(c) For certain key men in industry, commerce or agriculture (Sect. 65, C.A. 1).

135. Failure to register subjects one to penalty. Thus:

> "Section 76-A. Any person failing to register for military service herein provided, or who shall fail to report to the corresponding Acceptance Board or to a designated training camp after having been duly notified to do so shall, upon conviction, be sentenced to serve not more than six months in prison or to pay a fine of not to exceed two hundred pesos, or both, at the discretion of the Court. Conviction for this offence shall not exempt the person convicted from the military service herein required."

136. Many persons who have refused to register for military service, who have absented themselves from military service after registration, or who have refused to comply with the required military service have found themselves the subjects of criminal prosecutions both in Singapore and in the Philippines. In Singapore, in almost every case these persons have been convicted and either sent to prison or fined.

137. The sect - Jehovah's Witnesses - which was accused of urging its members to resist national service, was proscribed in 1972. The organization in Singapore was dissolved and it has been prohibited from carrying on any of its activities in Singapore.

138. This same sect - Jehovah's Witnesses - in the Philippines, was also the subject of a suit whereby the Philippine Supreme Court, in deciding the case, cited with approval, cases decided by the United States Supreme Court which refused to recognize conscientious objection as a valid excuse to avoid military service. Religious reasons are not therefore also recognized in the Philippines as valid objections to military service. [See Gerona v. Secretary of Education, 106 Phil. 2 (1959).]

139. In Singapore, in 1969, the son of Dr. Lee Siew Choh (at one time the Chairman of a political party - the Barisan Socialis) objected to conscription and refused to answer the summons to report for national service. He was prosecuted in court and sentenced to four months imprisonment. In 1970, he was again prosecuted and sentenced to pay a fine of $950.00 or suffer 152 days imprisonment. The sentence was later reduced to $150.00 and in lieu 15 days' imprisonment when he appealed against his sentence. Dr. Lee's son did not raise in his objection any of the factors set out in Regulation 23. He stated quite boldly that he was opposed to conscription because it was immoral and unjust and that he objected to being conscripted as cannon fodder.

140. In the Philippines, the Philippine Supreme Court has set aside arguments of conscientious objection. In People v. Lagman and People v. Zosa, 66 Phil. 13, (1938), the accused were charged with refusal to register for military training pursuant to Commonwealth Act No. 1. The accused Zosa claimed that he was fatherless and had a mother and brother to

support. The accused Lagman, in what perhaps may be an early expression of or allusion to conscientious objection said that he had no military leanings and did not wish to kill or be killed. Both also argued that the Act was unconstitutional. Both were convicted by the trial court. On appeal to the Supreme Court, their convictions were affirmed. Worse, the Court ruled:

> "... A person may be compelled by force, if need be, against his will, against his pecuniary interests, and even against his religious and political convictions, to take his place in the ranks of the army of his country and risk the chance of being shot down in its defence. ..."

141. Both the Governments of Singapore and the Philippines do not condone attempts to evade military service and the courts are urged to take a serious view of persons attempting to evade national service.

142. In view of these particularly alarming circumstances, the Council believes it is today timely not only to seek effective mechanisms, but also, and more importantly, finally to seek full and proper recognition and implementation in the ASEAN region of the right to conscientious objection to military service.

143. In Singapore as in the Philippines, there are as yet no independent and impartial decision-making bodies specifically entrusted with the task of determining whether conscientious objection to military service is valid in a specific case. The Council therefore urges that these bodies be immediately established, and calls upon the United Nations Commission on Human Rights to exert every effort to seek the early creation of such bodies in these two countries.

SERVICIO PAZ Y JUSTICIA

[16 November 1989]
[Original: Spanish]

144. It appears reasonable to recognize the right to conscientious objection to military service as a consequence deriving from the right to freedom of thought, conscience and religion recognized in the principal international instruments.

145. Together with the right of every person to have conscientious objections to military service, the procedure by means of which the performance of service is effected must be regulated. This procedure must be undertaken with all necessary guarantees and provide at least for an appeal to an independent judicial tribunal.

146. We consider legitimate the desire of the State to know the reasons why there should be a moral impediment to performance of service. This procedure must be effected with due guarantees, and consequently the intervention, at least at second instance, of an independent tribunal would appear appropriate.

147. These procedural guarantees are essential in order to ensure that the conscientious objector is not, in consequence of the exercise of this right, involved in a disciplinary or punitive procedure which still places him in a more unfavourable situation, through which he has to perform a disciplinary or punitive sanction in addition to military service. These are cases which arise when the procedure for lodging the objection is not regulated.

148. Another of the guarantees which the conscientious objector must be given relates to the alternative service he is offered. In this connection, the conditions required under paragraph 4 of the resolution, namely, that it should be of a civilian character, in the public interest and not of a punitive nature, would appear to be reasonable. Since in practice it may be difficult to determine whether or not alternative service is of a punitive nature, the duration of the alternative service may be indicative of this point.

WORLD MOVEMENT OF MOTHERS

[15 December 1989]
[Original: French]

149. In the current international situation, military service would still appear to be necessary. Conscientious objection to bearing arms may be legitimate. It must be genuine and sincere, and not a pretext for refusing a period of useful service for the country. The alternative service proposed must be clearly defined and organized by the State. It must specifically meet the immediate needs of the public interest of each country and therefore requires constant adaptation. The alternative service must remain demanding and formative; it must not promote "moral disarmament" among young people. Young women could participate in military or alternative service on the same basis as young men, but in the case of women who marry, the years of "active motherhood" should be regarded as periods of alternative service. Military service, while comprising instruction in the handling of weapons and co-operation in national defence activities, should become more educational: character-building, education in human rights, technical training corresponding to the needs of modern technologies.